

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

CASE NO. 04-11789-RCL

**MARLENE JOHANSEN,
Plaintiff, Counterclaim Defendant,**

v.

**UNITED STATES OF AMERICA,
Defendant, Counterclaim Plaintiff,**

v.

**NATIONAL CITY MORTGAGE CO.,
AND TIMOTHY BURKE
Counterclaim Defendants.**

**ANSWER OF NATIONAL CITY MORTGAGE CO. TO COUNTERCLAIM
FILED BY THE UNITED STATES OF AMERICA**

Now comes the Counterclaim Defendant, National City Mortgage Co. (hereinafter "National City") and hereby answers the United States of America's Counterclaims (hereinafter "USA").

25. Paragraph 25 of the counterclaim contains a statement of law for which no response is required.
26. National City is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 26 of the counterclaims.
27. Admitted. National City is the holder of the first mortgage on the property located at 71 Pleasant Street, Stonham, MA.
28. National City is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 28 of the counterclaims.

29. National City is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 29 of the counterclaims.
30. National City is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 30 of the counterclaims.
31. National City is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 31 of the counterclaims.
32. National City is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 32 of the counterclaims.
33. National City is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 33 of the counterclaims.
34. National City is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 34 of the counterclaims.
35. National City is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 35 of the counterclaims.
36. National City admits that a deed dated January 4, 2002 was recorded with the Middlesex County Registry of Deeds (Southern District) on December 8, 2002, in Book 37309, Page 409, that conveys the property located at 71 Pleasant Street, Stoneham, MA from Ralph E. Johansen and Marlene E. Johansen to Marlene E. Johansen.
37. Denied.
38. National City is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 38 of the counterclaims.
39. Admitted.

40. National City is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 40 of the counterclaims.
41. National City is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 41 of the counterclaims.
42. National City is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 42 of the counterclaims.
43. National City is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 43 of the counterclaims.
44. National refers to its responses to paragraphs 25 through 43 as referenced above.
45. National City is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 45 of the counterclaims.
46. National City is without knowledge or information sufficient to form a belief as to the allegation contained in Paragraph 46 of the counterclaims.
47. National City is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 47 of the counterclaims.
48. National City is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 48 of the counterclaims.
49. National City is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 49 of the counterclaims.
50. National City is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 50 of the counterclaims.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The counterclaim fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

The counterclaim must be dismissed for insufficiency of process.

THIRD AFFIRMATIVE DEFENSE

The counterclaim must be dismissed for insufficiency of service of process.

FOURTH AFFIRMATIVE DEFENSE

USA's claims are barred by the applicable statutes of limitations.

FIFTH AFFIRMATIVE DEFENSE

USA's delay in commencing suit is inexcusable and has resulted in prejudice to National City so substantial that the doctrine of laches bars its claims.

SIXTH AFFIRMATIVE DEFENSE

USA's claims are barred by the doctrine of *res judicata*.

SEVENTH AFFIRMATIVE DEFENSE

USA's claims are barred by the doctrine of *collateral estoppel*.

EIGHTH AFFIRMATIVE DEFENSE

USA's claims are barred by the doctrine of estoppel.

NINETH AFFIRMATIVE DEFENSE

If USA suffered any damages, which are denied, then those damages were caused by a person or persons for whose actions National City One cannot be held liable.

TENTH AFFIRMATIVE DEFENSE

USA's claims are barred due to a failure of consideration.

ELEVENTH AFFIRMATIVE DEFENSE

USA's claims are barred by the applicable statute of frauds.

TWELFTH AFFIRMATIVE DEFENSE

National City adopts such other defenses raised by any other defendant as may be applicable.

THIRTEENTH AFFIRMATIVE DEFENSE

National City reserves the right to amend this filing to assert any and all applicable affirmative defenses which discovery may reveal appropriate.

FOURTEENTH AFFIRMATIVE DEFENSE

National City's interest is superior to that of USA based upon record title.

FIFTEENTH AFFIRMATIVE DEFENSE

The counterclaim should be dismissed since it was improperly brought as a counterclaim in this action when National City was not a party to the original action.

SIXTEENTH AFFIRMATIVE DEFENSE

The counterclaim should be dismissed USA's failure to properly join National City as a party to this action.

PRAYER FOR RELIEF

Wherefore, National City Mortgage Co., prays that this Court:

- 1) Enter Judgment of Dismissal on all counts of the counterclaim;

- 2) Enter a Declaration that National City Mortgage Co.'s interest is superior to that of the United States of America;
- 3) Enter an Order granting National City Mortgage Co. its fees and costs; and
- 4) Such further relief as is just and equitable.

Respectfully submitted,
NATIONAL CITY MORTGAGE CO.
By its Attorney,



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December 29, 2004

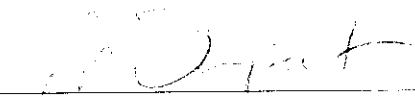
CERTIFICATE OF SERVICE

I, Michelle C. Davenport, hereby certify that on December 29, 2004, true copies of the Answer to Counterclaims was served by mailing first class mail, postage pre-paid to:

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